

IC 33-38-14

Chapter 14. The Commission on Judicial Qualifications and the Discipline of Judges of Superior, Probate, Juvenile, and Criminal Courts

IC 33-38-14-1

Purpose

Sec. 1. It is the purpose of this chapter to provide that judges of superior, probate, juvenile, or criminal courts in counties described in section 9 of this chapter are subject to disciplinary action on the grounds and in the manner set forth in this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-2

"Commission" defined

Sec. 2. As used in this chapter, "commission" means the commission on judicial qualifications described in Article 7, Section 9 of the Constitution of the State of Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-3

"Counsel" defined

Sec. 3. As used in this chapter, "counsel" means the lawyer designated by the commission to:

- (1) gather and present evidence before the masters or the commission with respect to the charges against a judge; and
- (2) represent the commission before the supreme court in connection with any proceedings before the court.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-4

"Judge" defined

Sec. 4. As used in this chapter, "judge" means a judge of a superior or probate court.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-5

"Mail" defined

Sec. 5. As used in this chapter, "mail" includes ordinary mail or personal delivery.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-6

"Masters" defined

Sec. 6. As used in this chapter, "masters" means the special masters appointed by the chief justice upon request of the commission.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-7

"Presiding master" defined

Sec. 7. As used in this chapter, "presiding master" means the master so designated by the chief justice or, in the absence of a designation, the justice or judge named in the order appointing masters.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-8

Commission on judicial qualifications

Sec. 8. Subject to section 9 of this chapter, the commission is the commission on judicial qualifications for judges of trial courts. The members of the commission on judicial qualifications for the court of appeals and the supreme court are the members of the commission on judicial qualifications for judges of the trial courts.

As added by P.L.98-2004, SEC.17. Amended by P.L.65-2004, SEC.17.

IC 33-38-14-9

Disciplinary jurisdiction over judges

Sec. 9. (a) The commission shall exercise disciplinary jurisdiction over judges of trial courts.

(b) In a county in which a commission on judicial qualifications operated by virtue of law before July 26, 1973, the county commission on judicial qualifications ceases to exercise disciplinary jurisdiction over the county courts and the commission shall exercise disciplinary jurisdiction. However, if the law creating a county commission on judicial qualifications in a county before July 26, 1973, precluded judges subject to its disciplinary jurisdiction from participating in political activities because the judges are selected by a merit system, the judges are precluded from participating in political activities.

(c) The operation and function of a judicial nominating commission operating in a county by virtue of law before July 26, 1973, is not affected by this chapter.

As added by P.L.98-2004, SEC.17. Amended by P.L.65-2004, SEC.18.

IC 33-38-14-10

Disqualification; suspension; retirement; censure; removal

Sec. 10. (a) A judge is disqualified from acting as a judicial officer, without loss of salary, while there is pending:

- (1) an indictment or information charging the judge in a United States court with a crime punishable as a felony under Indiana or federal law; or
- (2) a recommendation to the supreme court by the commission for the judge's removal or retirement.

(b) On recommendation of the commission or on its own motion, the supreme court may suspend a judge from office without salary if in a United States court the judge pleads guilty or no contest or is found guilty of a crime that:

- (1) is punishable as a felony under Indiana or federal law; or
- (2) involves moral turpitude under the law.

If the judge's conviction is reversed, the suspension terminates and the judge shall be paid the judge's salary for the period of suspension. If the judge's conviction becomes final, the supreme court shall remove the judge from office.

(c) On recommendation of the commission, the supreme court may:

- (1) retire a judge for a disability that:
 - (A) seriously interferes with the performance of the judge's duties; and
 - (B) is or is likely to become permanent; and
- (2) censure or remove a judge for an action that:
 - (A) occurs not more than six (6) years before the beginning of the judge's current term; and
 - (B) constitutes at least one (1) of the following:
 - (i) Willful misconduct in office.
 - (ii) Willful or persistent failure to perform the judge's duties.
 - (iii) Habitual intemperance.
 - (iv) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

A judge retired under this subsection is considered to have retired voluntarily. A judge removed under this subsection is ineligible for judicial office and, pending further order of the supreme court, is suspended from the practice of law in Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-11

Meetings of commissioners

Sec. 11. (a) The commission shall meet as necessary to discharge its statutory responsibilities. Meetings of the commission shall be called in the same manner as prescribed for the judicial nominating commission. Four (4) members of the commission constitute a quorum.

(b) Commission meetings are to be held in Indiana on the call of the chairman.

(c) The commission may act only at a meeting. The commission may adopt rules and regulations to conduct its meetings and discharge its duties.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-12

Confidentiality of proceedings; public inspection

Sec. 12. (a) Papers filed with and proceedings before the commission before the institution of formal proceedings are confidential unless:

- (1) the judge against whom a recommendation is filed elects to have the information divulged; or
- (2) the commission elects to answer public statements by a

complainant.

(b) Papers filed with the commission during or after the institution of formal proceedings are open for public inspection at all reasonable times. Records of commission proceedings are open for public inspection at all reasonable times. All hearings and proceedings before the commission, after the institution of formal proceedings, are open to the public.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-13

Privilege

Sec. 13. Filing papers with or giving testimony before the commission or the masters under this chapter is privileged.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-14

Commission; complaint

Sec. 14. (a) Any citizen of Indiana may file with the commission a written and verified complaint on the judicial fitness of a judge of a superior, criminal, juvenile, or probate court of Indiana.

(b) A specified form of complaint may not be required.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-15

Request of justice or judge to retire; complaint by citizen or on commission's own motion; investigation

Sec. 15. (a) A judge may request retirement due to disability.

(b) A citizen of Indiana may complain to the commission about the activities, fitness, or qualifications of a judge. Upon receipt of a complaint, the commission shall determine if the complaint is frivolous. The commission may, on its own motion, inquire into the activities, fitness, or qualifications of a judge.

(c) If the commission determines it is necessary to investigate a judge, the commission shall notify the judge by prepaid registered or certified mail addressed to the judge at the judge's chambers and last known residence of the following:

(1) The investigation.

(2) The nature of the complaint.

(3) The origin of the complaint, including the name of the complainant or that the investigation is on the commission's motion.

(4) The opportunity to present in the court of the investigation matters as the judge chooses.

(d) The commission may do the following:

(1) Conduct investigations.

(2) Employ special investigators.

(3) Hold confidential hearings with the judge's or commission's agents or attorneys.

(4) Hold confidential hearings with any judge involved.

(e) If:

(1) the commission's initial inquiry or investigation does not disclose sufficient cause to warrant further proceedings; and
(2) the complainant subsequently issues any public statement relating to the activities or actions of the commission;
the commission may answer the statement by referring to the record of proceedings or the results of the investigations.
As added by P.L.98-2004, SEC.17.

IC 33-38-14-16

Notice of formal proceedings

Sec. 16. (a) If the commission decides to institute formal proceedings, the commission shall give written notice to the judge advising the judge of the institution of formal proceedings to inquire into the charges against judge. The proceedings must be entitled:

"BEFORE THE INDIANA JUDICIAL QUALIFICATIONS COMMISSION

Inquiry Concerning a Judge, No. _____".

(b) The notice must:

(1) specify in ordinary and concise language the charges against the judge and the alleged facts upon which the charges are based; and

(2) advise the judge of the judge's right to file a written answer not more than twenty (20) days after service of notice.

A charge is not sufficient if it recites the general language of the original complaint.

(c) The notice shall be made upon the judge by registered or certified mail addressed to the judge at the judge's chambers and last known residence.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-17

Answer

Sec. 17. Not more than twenty (20) days after service of the notice of formal proceedings, the judge:

(1) may file with the commission a signed original and one (1) copy of an answer; and

(2) shall serve by mail a copy of the answer on the counsel.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-18

Setting for hearing before commission or masters

Sec. 18. (a) Upon the filing of or the expiration of the time for filing an answer, the commission shall:

(1) order a hearing before the commission on the discipline, retirement, or removal of the judge; or

(2) request the supreme court to appoint three (3) active or retired judges of courts of record as special masters to hear and take evidence on the matter and to report to the commission.

(b) The commission shall:

(1) set a time and place in the state in which the judge involved

resides for a hearing; and
(2) mail notice of the hearing to the judge, the masters, and the counsel at least twenty (20) days before the hearing date.
As added by P.L.98-2004, SEC.17.

IC 33-38-14-19

Hearing

Sec. 19. (a) The commission, or the masters when the hearing is before the masters, may proceed with the hearing whether or not the judge files an answer or appears at the hearing.

(b) The failure of a judge to answer or to appear at the hearing by itself is not evidence of the facts alleged and does not constitute grounds for censure, retirement, or removal. In a proceeding for involuntary retirement for disability, the failure of a judge to testify in the judge's own behalf or to submit to a medical examination requested by the commission or the masters may be considered, unless the failure was due to circumstances beyond the judge's control.

(c) The hearing shall be reported verbatim.

(d) At a hearing before the commission, not less than four (4) members must be present when the evidence is produced.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-20

Evidence

Sec. 20. The Indiana Rules of Evidence apply at a hearing before the commission or the masters.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-21

Rights of a judge; notice; incapacitation

Sec. 21. (a) In formal proceedings involving the discipline, retirement, or removal of a judge, the judge may:

- (1) defend against the charges by introducing evidence;
- (2) be represented by counsel;
- (3) examine and cross-examine witnesses; and
- (4) issue subpoenas for attendance of witnesses to testify or produce evidentiary matter.

(b) If testimony is transcribed at the expense of the commission, a copy shall be provided to the judge at no cost. The judge is entitled to have testimony transcribed at the judge's expense.

(c) Except as otherwise provided in this chapter, any notice or matter sent to the judge shall be mailed by registered or certified mail to the judge at the judge's office and residence unless the judge requests otherwise in writing. A copy of the notice or matter shall be mailed to the judge's counsel.

(d) If a judge has been adjudicated incapacitated under IC 29-3, the judge's guardian may exercise any right or privilege and make any defense for the judge as if exercised or made by the judge. If any notice or matter is sent to the judge, a copy of the notice or matter

also shall be sent to the judge's guardian.
As added by P.L.98-2004, SEC.17.

IC 33-38-14-22

Amendments to notice or answer

Sec. 22. The masters, before the conclusion of the hearing, or the commission, before its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts. If an amendment is made, the judge shall be given reasonable time to answer the amendment and to prepare and present a defense.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-23

Report of masters

Sec. 23. (a) After a hearing before the masters, the masters shall promptly transmit to the commission an original and four (4) copies of:

- (1) a transcript of the hearing; and
- (2) a report that contains a brief statement of the proceedings and recommended findings of fact.

The recommended findings of facts are not binding on the commission.

(b) Upon receiving the report of the masters, the commission shall promptly mail a copy of the report and transcript to the judge and the judge's counsel.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-24

Objections to report of masters

Sec. 24. Not more than fifteen (15) days after a copy of the report of the masters is mailed to the judge, the counsel or the judge may file with the commission an original and one (1) copy of objections to the report of the masters. If the counsel files objections, the counsel shall mail a copy of the objections to the judge. If the judge files objections, the judge shall mail a copy of the objections to the counsel.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-25

Appearance before commission

Sec. 25. If objections to the report of the masters are not timely filed, the commission may adopt the recommended findings of the masters without a hearing. If objections are timely filed, or if objections are not timely filed and the commission proposes to modify or reject the recommended findings of the masters, the commission shall give the judge and the counsel an opportunity to be heard in the county where the judge resides. The commission shall mail to the judge and the counsel written notice of the time and place

of the hearing not less than ten (10) days before the hearing.
As added by P.L.98-2004, SEC.17.

IC 33-38-14-26

Extension of time

Sec. 26. (a) The chairman of the commission may extend the time for:

- (1) filing an answer;
- (2) commencing a hearing before the commission; or
- (3) filing objections to the report of the masters.

(b) The presiding master, with the approval of the chairman of the commission, may extend the time for commencing a hearing before the masters.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-27

Hearing additional evidence

Sec. 27. (a) The commission may order a hearing to take additional evidence at any time while the matter is pending before the commission. The order must set the time and place of the hearing in the county in which the judge resides and must indicate the matters on which evidence will be taken. A copy of the order shall be mailed to the judge and the counsel at least ten (10) days before the hearing.

(b) If masters have been appointed, the hearing of additional evidence is before the masters in accordance with this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-28

Vote or recommendation for discipline, retirement, or removal

Sec. 28. If the commission finds good cause, it shall recommend to the supreme court the discipline, retirement, or removal of a judge. If a hearing is before the masters, the affirmative vote of four (4) commission members is required to recommend the discipline, retirement, or removal of a judge. If a hearing is before the commission, the affirmative vote of four (4) commission members, including a majority of the members present at the hearing, is required to recommend the discipline, retirement, or removal of a judge.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-29

Record of commission proceedings

Sec. 29. The commission shall keep a record of all formal proceedings concerning a judge. The commission shall enter its determination in the record and mail notice to the judge and the counsel. If the commission recommends the discipline, retirement, or removal of a judge to the supreme court, the commission shall prepare a transcript of the evidence and proceedings and shall make written findings of fact and conclusions of law.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-30

Certification of commission recommendation to supreme court

Sec. 30. Upon recommending the discipline, retirement, or removal of a judge, the commission shall file a copy of each of the following with the clerk of the supreme court:

- (1) The recommendation certified by the chairman or secretary of the commission.
- (2) The transcript.
- (3) The findings of fact and conclusions of law.

The commission shall mail to the judge and the counsel notice of the filing and copies of the filed documents.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-31

Petition for modification or rejection of commission's recommendation

Sec. 31. (a) A judge may petition the supreme court to modify or reject the recommendation of the commission for discipline, retirement, or removal of the judge not more than thirty (30) days after the certified copy of the commission's recommendation is filed with the clerk of the supreme court.

(b) A petition described in subsection (a) must:

- (1) be verified;
- (2) be based on the record;
- (3) specify the grounds relied on; and
- (4) be accompanied by the petitioner's brief and proof of service of two (2) copies of the petition and brief on the commission and one (1) copy of the petition and brief on the counsel.

(c) Not more than twenty (20) days after service of the petitioner's brief, the commission shall file a respondent's brief and serve a copy of the brief on the judge.

(d) Not more than twenty (20) days after service of the respondent's brief, the judge may file a reply brief. The judge shall serve two (2) copies of the reply brief on the commission and one (1) copy of the reply brief on the counsel.

(e) Failure to timely file a petition is considered consent to the determination on the merits based on the record filed by the commission.

(f) To the extent necessary and not inconsistent with this section, the Indiana Rules of Appellate Procedure apply to reviews by the supreme court of commission proceedings.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-32

Jurisdiction and powers

Sec. 32. The commission has jurisdiction and powers to dispose of any investigation or hearing, including the following:

- (1) The power to compel the attendance of witnesses.

(2) The power to depose witnesses.

(3) The power to order the production of documentary evidence.

Any commission member or any master may administer oaths and affirmations to witnesses in a matter under the jurisdiction of the commission.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-33

Subpoenas

Sec. 33. (a) A master may issue a subpoena for:

- (1) the attendance of witnesses;
- (2) the production of documentary evidence; or
- (3) discovery;

in a proceeding before the masters. The master shall serve the subpoena in the manner provided by law.

(b) The chairman of the commission may issue a subpoena for:

- (1) the attendance of witnesses;
- (2) the production of documentary evidence; or
- (3) discovery;

in a proceeding before the commission or in which masters have not been appointed. The chairman shall serve the subpoena in the manner provided by law.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-34

Enforcement of subpoena

Sec. 34. If a witness in a commission proceeding:

- (1) fails or refuses to attend upon subpoena; or
- (2) refuses to testify or produce documentary evidence demanded by subpoena;

a circuit court may enforce the subpoena.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-35

Filing

Sec. 35. All papers and pleadings filed with the office of the chairman of the commission are considered filed with the commission.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-36

Discovery; admissibility of evidence; demand for formal proceeding or finding

Sec. 36. (a) In all formal proceedings, discovery is available to the commission and the judge under the Indiana Rules of Civil Procedure. A motion requesting a discovery order must be made to the circuit court in the county in which the commission hearing is held.

(b) In all formal proceedings, the counsel shall provide the following to the judge at least twenty (20) days before a hearing:

(1) The names and addresses of all witnesses whose testimony the counsel expects to offer at the hearing.

(2) Copies of all written statements and transcripts of testimony of witnesses described in subdivision (1) that:

(A) are in the possession of the counsel or the commission;

(B) are relevant to the hearing; and

(C) have not been provided to the judge.

(3) Copies of all documentary evidence that the counsel expects to introduce at the hearing.

(c) On objection by a judge, the testimony of a witness whose name and address have not been furnished to the judge and documentary evidence that has not been furnished to the judge, are not admissible at a hearing.

(d) After formal proceedings have been instituted, a judge may request in writing that the counsel provide the judge the names and addresses of all witnesses known at any time to the counsel who have information that may be relevant to any charge against or any defense of the judge. The counsel shall provide copies of written statements, transcripts of testimony, and documentary evidence that:

(1) are in the commission counsel's possession at any time;

(2) are relevant to a charge against or defense of the judge; and

(3) have not been furnished to the judge.

The counsel shall comply with the request not more than ten (10) days after receiving the request or not more than ten (10) days after any information or evidence becomes known to the counsel.

(e) During an investigation by the commission, a judge whose conduct is being investigated may demand in writing that the commission institute formal proceedings against the judge or enter a formal finding that there is not probable cause to believe the judge is guilty of misconduct. Not more than sixty (60) days after receiving a written demand, the commission shall comply with the demand. A copy of the demand shall be filed in the supreme court and is a matter of public record. If the commission finds there is not probable cause, the finding shall be filed in the supreme court and is a matter of public record.

As added by P.L.98-2004, SEC.17.